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ELECTION COMMISSION, INDIA

ELECTION TRIBUNAL, FAIZABAD

NOTIFICATION

*Faizabad, the 8th November 1952*

No. 19/267/52-Elec. III.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition, presented under section 81 thereof, is published for information.

D. N. Roy, Chairman.

BEFORE THE HON'BLE ELECTION COMMISSION OF INDIA, NEW DELHI.

ELECTION PETITION No. 268-A of 1952.

*Petition of Shri Shibban Lal Saksena, under section  
81 of the Representation of the People Act, 1951.*

Shri Sibban Lal Saksena, son of B. Chhotey Lal, resident of House No. 18, Mohalla Allahdadpur in Gorakhpur City, who was a candidate for election to the Council of States from the Uttar Pradesh Legislative Assembly Constituency—  
*Petitioner.*

*Versus*

1. Shri Ahmad Said Khan, of 315 Marris Road, Allgarh, who has been declared elected from the aforesaid Council of States Constituency.
2. Shri Akhtar Hussain, of Moti Mahal, 40/3 Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
3. Shri Amar Nath Agrawal, of 500 Daragunj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.
4. Shri Amolak Chand, of 285 Narhi, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
5. Shri Brij Behari, of Kurmi Tola, District Azamgarh, who has been declared elected from the aforesaid Council of States Constituency.
6. Shrimati Chandravati, of 60 Rajpur Road, Dehra Dun, who has been declared elected from the aforesaid Council of States Constituency.
7. Shri A. Dharam Das, of 319 Beldari Lane, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
8. Shri Gopi Nath Singh, of 11/364 Soutergunj, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.
9. Shri Har Prasad Saksena, of 117 Newazgunj, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

10. Shri Hirdey Nath Kunzru, of 18 Feroz Shah Road, New Delhi, who has been declared elected from the aforesaid Council of States Constituency.
11. Shri Indra Vidyavachaspati, of Gurukul Kangri, Hardwar, who has been declared elected from the aforesaid Council of States Constituency.
12. Shri Jagannath Prasad urf Jagan, of Purwari Tola, Biswan Town, District Sitapur, who has been declared elected from the aforesaid Council of States Constituency.
13. Shri Jasaud Singh, of Tikonla Road, Haldwani Town, Naini Tal District, who has been declared elected from the aforesaid Council of States Constituency.
14. Shri Jaspat Roy Kapoor, of Sheetla Gali, Agra, who has been declared elected from the aforesaid Council of States Constituency.
15. Shri Lal Bahadur Shastri, of 209 Muthiganj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.
16. Shrimati Kudsia Begum, of 9 Kaiser Bagh, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
17. Shri Mohammad Faruqi, of 249, Bahadurganj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.
18. Shri B. K. Mukerji, of A. P. Sen Road, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
19. Shri Murari Lal, of 16/19 Civil Lines, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.
20. Shri Narendra Deva, Vice-Chancellor, Banaras Hindu University, Banaras, who has been declared elected from the aforesaid Council of States Constituency.
21. Shri Nawab Singh Chauhan, of V. Jawan Bajidpur (Jawan), District Aligarh, who has been declared elected from the aforesaid Council of States Constituency.
22. Shri Ram Chand Gupta, of House No. 4275 Singigall, Agra, who has been declared elected from the aforesaid Council of States Constituency.
23. Shri Ram Kripal Singh, of 495 Swamipara, Meerut City, who has been declared elected from the aforesaid Council of States Constituency.
24. Shri Ram Prasad, of 67 Tamta Mohalla, Almora, who has been declared elected from the aforesaid Council of States Constituency.
25. Shrimati Savitry Devi Nigam, of Ganga Bhawan, Yahiagunj, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
26. Shri Shyam Dhar, of Kathanta, Gopigunj, Banaras, who has been declared elected from the aforesaid Council of States Constituency.
27. Shri Shyam Sunder Narain Tankha, of Kaiser Bagh, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.
28. Shri J. P. Srivastava, of 4/276 Nawabgunj, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.
29. Shri Sumat Prasad, Advocate, of Ward No. 3, Muzaffarnagar, who has been declared elected from the aforesaid Council of States Constituency.
30. Shri Tarkeshwar Pandey, of Mohalla Jagdishpur, Ballia, who has been declared elected from the aforesaid Council of States Constituency.
31. Shri Thakur Das, of CK 52/3 Raja Darwaza, Banaras City, who has been declared elected from the aforesaid Council of States Constituency.
32. Shri Ganesh Dutt, of village Pindari, P. O. Pindari, District Jalaun, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.
33. Shri Himanshu Dhar Singh, of village Tikari Dandu, P. O. Dih, District Rae Bareilly, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.
34. Shri Hiralal Khanna, of 8/215 Aryanagar, Kanpur who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.
35. Shri Mahavir Singh, of Katra (East) W-77, Banda, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.
36. Shri Ram Narayan Pande, of 6 A. P. Sen Road, Lucknow, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.—*Respondents*.

The humble Petitioner begs to submit as follows:—

1. That the petitioner was a candidate for election to the Council of States from the Uttar Pradesh Legislative Assembly Constituency and so were all the 36 Respondents, and excepting the Petitioner and the Respondents Nos. 32, 33, 34, 35 and 36, the remaining 31 Respondents were declared elected in the election held on the basis of proportional representation by the single transferable vote.

2. That the election was held in the Library Hall of the U. P. Legislative Assembly, Lucknow, on the 27th day of March 1952, and 425 out of a total of 429 elected members of the U. P. Legislative Assembly at the time of the election took part in it.

3. That in the counting of votes, ballot papers in which the figure 1 was set opposite the names of more than one candidate were not rejected as invalid by the Returning Officer, although the Petitioner objected to their acceptance as valid votes, thereby vitiating the result of the election.

4. That one of the ballot papers containing the first preference vote for the Petitioner was wrongly credited to another candidate, Respondent No. 8, Shri Gopi Nath Singh, in spite of the Petitioner's objection to the contrary, thereby vitiating the result of the election.

5. That ballot papers in which the electors had marked the preferences in such a way that they could afterwards be identified, by marking their preferences in the column containing the names of the candidates and not in the column set apart for such marking were accepted by the Returning Officer as valid, although the Petitioner objected to their acceptance as valid, thereby vitiating the result of the election.

6. That the calculation was not carried out to the very end by the process of elimination of the candidates lowest on the poll, thereby vitiating the result of the election.

7. That at the second and third transfers, the papers which had been received at the previous transfer at lesser value were wrongly transferred at values higher than their original value, thereby vitiating the entire calculation and the consequent result of the election.

#### PRAYER

The petitioner, therefore, prays that the petitioner be declared as duly elected to the Council of States as a result of the recounting in accordance with the rules made under the Representation of the People Act 1951, in place of respondent No. 28, Shri J. P. Srivastava, or Respondent No. 29, Shri Sumat Prasad, or any other candidate who is found to have secured less number of valid votes than the Petitioner but who was wrongly declared as elected due to the improper reception or refusal of votes which were void or valid respectively.

(Sd.) SHIBBANLAL SAKSENA,

Petitioner.

22-4-52.

I solemnly affirm that the facts in paras 1, 3, 4, 5, 6 and 7 are true to my knowledge and the facts contained in the remaining para 2 are true to the best of my information and belief.

(Sd.) SHIBBANLAL SAKSENA,

Petitioner.

22-4-52.

#### BEFORE THE HON'BLE ELECTION COMMISSION OF INDIA, NEW DELHI

##### ELECTION PETITION No. 268-A OF 1952

Petition of Shri Shibban Lal Saksena, under Section 81 of the Representation of the People Act, 1951.

Shri Shibban Lal Saksena, son of B. Chhotey Lal, resident of House No. 18, Mohalla Allahdadpur in Gorakhpur City, who was a candidate for election to the Council of States from the Uttar Pradesh Legislative Assembly Constituency.—  
*Petitioner.*

#### *Versus*

1. Shri Ahmad Said Khan, of 315 Marris Road, Allgarh, who has been declared elected from the aforesaid Council of States Constituency.

2. Shri Akhtar Hussain of Moti Mohal, 40/3, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

3. Shri Amar Nath Agarwal, of 500 Daragunj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.

4. Shri Amolak Chand, of 285 Narhi, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

5. Shri Brij Behari, of Kurmi Tola, District Azamgarh, who has been declared elected from the aforesaid Council of States Constituency.

6. Shrimati Chandravati, of 60 Rajpur Road, Dehra Dun, who has been declared elected from the aforesaid Council of States Constituency.

7. Shri A. Dharam Das, of 319 Beldari Lane, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

8. Shri Gopi Nath Singh, of 11/364 Soutergunj, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.

9. Shri Har Prasad Saksena, of 117 Newazgunj, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

10. Shri Hirdey Nath Kunzru, of 18 Feroz Shah Road, New Delhi, who has been declared elected from the aforesaid Council of States Constituency.

11. Shri Indra Vidyavachaspati, of Gurukul Khangri, Hardwar, who has been declared elected from the aforesaid Council of States Constituency.

12. Shri Jagannath Prasad urf Jagan, of 42 Purwari Tola, Biswan Town, District Sitapur, who has been declared elected from the aforesaid Council of States Constituency.

13. Shri Jasaud Singh, of Tikonja Road, Haldwani Town, Naini Tal District, who has been declared elected from the aforesaid Council of States Constituency.

14. Shri Jaspat Roy Kapoor, of Sheela Gall, Agra, who has been declared elected from the aforesaid Council of States Constituency.

15. Shri Lal Bahadur Shastri, of 209 Muthiganj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.

16. Shrimati Kudsia Begum, of 9 Kaiser Bagh, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

17. Shri Mohammad Faruqi, of 249 Bahadurganj, Allahabad, who has been declared elected from the aforesaid Council of States Constituency.

18. Shri B. K. Mukerji, of A. P. Sen Road, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

19. Shri Murari Lal, of 16/19, Civil Lines, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.

20. Shri Narendra Deva, Vice-Chancellor, Banaras Hindu University, Banaras, who has been declared elected from the aforesaid Council of States Constituency.

21. Shri Nawab Singh Chauhan, of V. Jawan Bajildpur (Jawan), District Aligarh, who has been declared elected from the aforesaid Council of States Constituency.

22. Shri Ram Chand Gupta, of House No. 4275, Singigall, Agra, who has been declared elected from the aforesaid Council of States Constituency.

23. Shri Ram Kripal Singh, of 495 Swamipara, Meerut City, who has been declared elected from the aforesaid Council of States Constituency.

24. Shri Ram Prasad, of 67 Tamta Mohalla, Almora, who has been declared elected from the aforesaid Council of States Constituency.

25. Shrimati Savitry Nigam, of Ganga Bhawan, Yahlagunj, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

26. Shri Shyam Dhar, of Kathanta, Gopigunj, Banaras, who has been declared elected from the aforesaid Council of States Constituency.

27. Shri Shyam Sunder Narain Tankha, of Kaiser Bagh, Lucknow, who has been declared elected from the aforesaid Council of States Constituency.

28. Shri J. P. Srivastava, of 4/276 Nawabgunj, Kanpur, who has been declared elected from the aforesaid Council of States Constituency.

29. Shri Sumat Prasad, Advocate, of Ward No. 3, Muzaffarnagar, who has been declared elected from the aforesaid Council of States Constituency.

30. Shri Takeshwar Pandey, of Mohalla Jagdishpur, Ballia, who has been declared elected from the aforesaid Council of States Constituency.

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32. Shri Ganesh Dutt, of village Pindari, P.O. Pindari, District Jalaun, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.

33. Shri Himanshu Dhar Singh, of village Tikari Dandu, P.O. Dih, District Rae Bareilly, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated.

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36. Shri Ram Narayan Pandey, of 6 A. P. Sen Road, Lucknow, who was a candidate from the aforesaid Council of States Constituency but has been declared defeated—*Respondents*.

#### STATEMENT OF FACTS

The humble petitioner begs to submit as follows:—

1. That the Petitioner was a candidate for election to the Council of States from the Uttar Pradesh Legislative Assembly Constituency and so were all the 36 Respondents, and excepting the Petitioner and the Respondents Nos. 32, 33, 34, 35 and 36, the remaining 31 Respondents were declared elected in the election held on the basis of proportional representation by the single transferable vote.

2. That the election was held in the Library Hall of the U.P. Legislative Assembly, Lucknow, on the 27th day of March 1952, and 425 out of a total of 429 elected members of the U.P. Legislative Assembly at the time of the election took part in it.

3. That at the time of the counting of votes, the Petitioner objected that fifteen of the ballot papers submitted by the members of the U.P. Legislative Assembly as electors were invalid, while one which was credited to Respondent No. 8, Shri Gopi Nath Singh, should have been credited to the Petitioner, but the Returning Officer rejected only six ballot papers as invalid and allowed the other nine ballot papers against which objection had been raised as valid, and credited the ambiguous ballot papers in favour of Respondent No. 8, Shri Gopi Nath Singh, with the result that the total number of valid votes became 419, and the quota became 1310, after treating the value of each vote as 100.

4. That the Petitioner had 7 first preference votes and the second preference votes of Respondent No. 34, Shri Hira Lal Khanna, whose total was 245, of Respondent No. 33, Shri Himanshu Dhar Singh, whose total was 146, and of Respondent No. 32, Shri Ganesh Dutt, whose total was 75, were for the Petitioner. If the calculation had been carried out to the very end, the Petitioner's votes would have been 1168 by the elimination of these three candidates, which was not done, thereby vitiating the result of the election.

5. That the nine votes against which also objection had been raised by the Petitioner included two ballot papers in which the first preference votes have been credited to Respondent No. 28, Shri J. P. Srivastava, who was declared to have secured 12 first preference votes and thereby elected, which would not have been so if these two ballot papers had been rejected as invalid, and in his place the Petitioner would have been declared elected, after the addition of the first preference vote which was wrongly credited to Respondent No. 8 Shri Gopi Nath Singh, but which the Petitioner claimed to be his.

6. That of the two votes of Respondent No. 28, Shri J. P. Srivastava, which should have been declared as invalid, the first preference in one of them was drawn across the two names of Respondent No. 27, Shri Shyam Sunder Narain Tankha, and Respondent No. 28, Shri J. P. Srivastava. This ballot paper was illegally declared as valid. In violation of Rule 89 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the elector in respect of the ballot paper in question placed on the ballot paper the figure of 1 not in the space opposite the name of Shri J. P. Srivastava but in the space opposite the names of two candidates. It should therefore have been rejected as invalid.

7. That the second ballot paper containing the first preference vote which was credited to Respondent No. 28, Shri J. P. Srivastava, but which should have been declared as invalid, was the one in which the first and second preferences were marked in Hindi and the figure of 1 was put in the space opposite the names of two candidates, Respondent No. 28, Shri J. P. Srivastava, and Respondent No. 29, Shri Sumat Prasad. This vote, which should have been rejected as invalid, was illegally accepted as valid. The election of Respondent No. 28, Shri J. P. Srivastava, is thus illegal.

8. That the ballot paper in which the Petitioner claims the first preference vote as his, the figure of 1 is marked both against the names of the Petitioner as well as against the name of Respondent No. 8 Shri Gopi Nath Singh, but the Returning

Officer wrongly decided that the figure of 1 against the Petitioner's name was merely the image made by folding the ballot paper without drying the ink of the first preference which the elector in respect of the ballot paper in question actually gave to Respondent No. 8, Shri Gopi Nath Singh, and wrongly rejected the Petitioner's plea that the elector had actually marked his first preference against the name of the Petitioner and the mark against the name of the Respondent No. 8, Shri Gopi Nath Singh, was really the image of the original writing made by folding the ballot paper without drying the ink. In any event, the counting should not have been made on the basis of the first preference vote to Respondent No. 8, Shri Gopi Nath Singh.

9. That if this first preference vote were credited to the account of the Petitioner, his total votes would mount to 1286, and he would thus be the 30th successful candidate, and Respondent No. 29, Shri Sumat Prasad, would have been the 31st.

10. That in the remaining ballot papers in respect of which the Petitioner had raised objections, in about four, the electors had marked the preferences in such a way that they could afterwards be identified, by marking their preferences in the column containing the names of the candidates and not in the column set apart for such marking, which had obviously been done by the electors in respect of the ballot papers in question with a view to sell their votes. All these ballot papers should have been rejected as invalid, but the Returning Officer accepted them as valid, although the Petitioner objected to their acceptance as valid, thereby vitiating the result of the election.

11. That the entire calculation was vitiated by one mistake, namely, that at the second and third transfers, the papers which had been received at the previous transfer at lesser value were transferred at values higher than their original value. For example, Respondent No. 9, Shri Har Prasad Saksena, received at the first transfer 11 papers of Respondent No. 30, Shri Tarkeshwar Pandey, at the value of 12 points from each paper. Respondent No. 9, Shri Har Prasad Saksena's total thus became 1300 plus 132 i.e. 1432. After deducting the quota of 1310, the surplus came to 122 points. When Respondent No. 9, Shri Har Prasad Saksena's surplus was distributed at the second transfer, there were only 6 unexhausted ballot papers, 4 of which were for Respondent No. 6, Shrimati Chandravati, 1 for Respondent No. 21, Shri Nawab Singh Chauhan and 1 for Respondent No. 19, Shri Murari Lal, and each of these 6 ballot papers were transferred by the Returning Officer at 20 points, with the result that 80 points were credited to Respondent No. 6, Shrimati Chandravati, 20 points to Respondent No. 21, Shri Nawab Singh Chauhan, and 20 points to Respondent No. 19, Shri Murari Lal, which was wrong and illegal, as the original value of each of these ballot papers was only 12 points and as such they could not become worth 20 points at the second transfer. Under the amended Rule 99(4) sub-clauses (c) and (d), each of the six unexhausted ballot papers could have been transferred only at its original value of 12 and not at 20. Thus, the entire calculation has been wrong and the entire election result has been vitiated. The counting of all the ballot papers should therefore be done over again.

#### PRAYER

The Petitioner, therefore, prays that the Petitioner be declared as duly elected to the Council of States as a result of the recounting in accordance with the Rules made under the Representation of the People Act, 1951, in place of Respondent No. 28, Shri J. P. Srivastava, or Respondent No. 29, Shri Sumat Prasad, or any other candidate who is found to have secured less number of valid votes than the Petitioner but who was wrongly declared as elected due to the improper receipt or refusal of votes which were void or valid respectively.

(Sd.) SHIBBANLAL SAKSENA,  
Petitioner.

22-4-1952.

I solemnly affirm that the facts in paras. 1, 3, 4, 5, 6, 7, 8, 9 and 10 are true to my knowledge and the facts in the remaining paras. 2 and 11 are true to the best of my information and belief.

(Sd.) SHIBBANLAL SAKSENA,  
Petitioner.

22-4-1952.

P. S. SUBRAMANIAN,  
for Chief Election Commissioner.